b. Positions of the Parties

311. First, WorldCom argues that, to implement the parties' legal obligation to provide reciprocal compensation for the exchange of certain traffic pursuant to sections 251(b)(5) and 252(d)(2), the agreement should contain language addressing reciprocal compensation for non-ISP-bound local traffic.[1032] Second, WorldCom contends that, notwithstanding its pronouncements on ISP-bound traffic, the Commission has not addressed the type of information service provider calls that are covered by WorldCom's proposed language.[1033] WorldCom argues its language is necessary to clarify which compensation mechanism will apply to traffic bound for non-ISP information service providers.[1034] WorldCom explains that information service providers that would be covered by its language include time and temperature information providers, whose numbers are local as determined by the NPA/NXXs.[1035] WorldCom argues that, historically, this traffic has been defined as jurisdictionally local and hence subject to reciprocal compensation and, moreover, it is not subject to the special interim rates that the Commission has adopted for ISP-bound traffic.[1036] Accordingly, the agreement must establish a mechanism for the carriers to be compensated for the flow of such traffic.[1037]

312. Verizon claims that its language, which it also offers in support of its argument under Issue I-5, is consistent with the Commission's approach in the *ISP Intercarrier Compensation Order*, which excludes section 251(g) traffic from traffic subject to section 251(b)(5).[1038] Verizon argues that the Commission's revised rules require that traffic must meet two requirements in order to be eligible for reciprocal compensation: (1) it must not be excepted by section 251(g); and (2) it must originate on the network of one carrier and terminate on the

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[1032] WorldCom Brief at 178; *see* 47 U.S.C. §§251(b)(5), 252(d)(2).

[1033] WorldCom Brief at 178, citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9171-73, paras. 44-46 (2001) (*ISP Intercarrier Compensation Order*), *remanded sub nom. WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). We note that although the United States Court of Appeals for the District of Columbia Circuit recently remanded the Commissions' *ISP Intercarrier Compensation Order*, finding that the Commission could not rely on section 251(g) as a basis to exempt ISP traffic from section 251(b)(5)'s reciprocal compensation obligations, it did not vacate that order because of the "non-trivial likelihood that the Commission has authority to elect" to order a bill-and-keep system for reciprocal compensation. *Id.*, 288 F.3d at 434.

[1034] WorldCom Brief at 178.

[1035] *Id.* citing WorldCom Ex. 8 (Direct Testimony of M. Argenbright), at 32; Tr. at 1729-30.

[1036] WorldCom Reply at 159, citing WorldCom Ex. 8, at 31-32; WorldCom Brief at 177-78.

[1037] WorldCom Reply at 159; WorldCom Brief at 177-78.

[1038] Verizon IC Brief at 29, citing Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.

network of another, pursuant to section 51.701(e) of the Commission's rules.[1039] Verizon advocates that we reject WorldCom's language as inconsistent with the *ISP Intercarrier Compensation Order* because, under the Commission's interpretation of section 251(g) in that order, a call to any information service provider is exempt from the reciprocal compensation requirements of section 251(b).[1040] Verizon also argues that WorldCom seeks to preserve the term "local traffic," but, under the Commission's *ISP Intercarrier Compensation Order*, eligibility for reciprocal compensation no longer turns on whether the traffic is "local."[1041]

c. Discussion

313. With respect to Issue IV-35, and consistent with our decisions on Issues I-1, I-2, I-5, I-6, and III-5, we adopt section 4.2 of WorldCom's proposed Price Schedule but order that the term "section 251(b)(5) traffic" be substituted for the term "Local Traffic" in section 4.2 and that the reference to "information service providers" in section 4.2.1.2 be stricken.[1042]

314. The parties disagree as to whether the Commission's ruling in the *ISP Intercarrier Compensation Order* (which has been remanded but not vacated since the time the parties filed their briefs) dictates that non-ISP information service provider traffic is not subject to reciprocal compensation.[1043] We need not decide this issue because we find that reference to such traffic in

[1039] Verizon IC Brief at 29, citing 47 U.S.C. § 251(g); 47 C.F.R. §51.701(e).

[1040] Verizon IC Reply at 15-16, citing 47 U.S.C. § 251(g); *ISP Intercarrier Compensation Order* 16 FCC Rcd at 9166-67, 9171, paras. 34, 44.

[1041] Verizon IC Brief at 29, citing WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 4.2.

[1042] Based upon our reasoning here and under each of these issues, we also reject section 7.2 of Verizon's proposed Interconnection Attachment. *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.2. Because we find in favor of WorldCom, we deny as moot its Motion to Strike on this issue.

[1043] WorldCom's proposed section 4.2 would make traffic directed to "local" information service providers subject to reciprocal compensation obligations. *See* Tr. at 1728-31. Specifically, proposed subsection 4.2.1.2, provides that section 4.2 "appl[ies] to reciprocal compensation for transport and termination of Local Traffic." *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. 1, § 4.2.1.2. With the exception noted here, we adopt subsection 4.2.1.2 under Issue I-6. *See* discussion of Issue I-6. "Local Traffic," in turn, is defined to be:

> traffic originated by one Party and directed to the NPA-NXX-XXXX of a LERG-registered end office of the other Party *within a Local Calling Area* and any extended service area, as defined by the Commission. Local Traffic *includes most traffic directed to information service providers, but does not include traffic to Internet Service Providers.*

See WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 4.2.1.2 (emphasis added). The WorldCom witness stated that, under this language, traffic directed to information service providers would be classified as "local" when, for example, a call was made to a time and temperature-type service "reached through the dialing of an NPA/NXX which is local to whatever the originating telephone number is." Tr. at 1729. Verizon, instead, would exclude all information service provider traffic from eligibility for reciprocal compensation. *See* Verizon IC Brief at 29. We address under Issue I-5 above Verizon's argument that all section 251(g) traffic is excepted from section 251 reciprocal compensation.

this agreement is unnecessary. As we discuss *infra*, with respect to Issue IV-1-AA, the parties agree that this type of traffic does not currently exist in Virginia and that neither party intends to carry it absent a change in Virginia law.[1044] Accordingly, we order that the reference to "information service providers" in WorldCom's section 4.2.1.2 be stricken.[1045]

315. Verizon also objects to WorldCom's use of the term "Local Traffic" in section 4.2. It claims that the Commission rejected that term in the *ISP Intercarrier Compensation Order*, and argues that it should not be preserved in the agreement.[1046] Verizon is correct: the Commission did find that use of the phrase "local traffic" created unnecessary ambiguities.[1047] Instead, the Commission has used the term "section 251(b)(5) traffic" to refer to traffic subject to reciprocal compensation.[1048] When questioned, the WorldCom witness stated that the term "Local Traffic" in section 4.2 has the same meaning as the term "section 251(b)(5) local traffic."[1049] Accordingly, we direct the parties to substitute the term "section 251(b)(5) traffic" where the term "Local Traffic" appears in section 4.2. Based upon WorldCom's testimony, this is consistent with its intent and will avoid ambiguity surrounding the term "local traffic."

D. Unbundled Network Elements

1. Issue III-6 ("Currently Combines" versus "Ordinarily or Typically Combined" UNEs)

a. Introduction

316. The Commission articulated an incumbent LEC's obligations with respect to UNE combinations that are "ordinarily" and "currently" combined in its *Local Competition First Report and Order*, which promulgated rules 51.315(a)-(f).[1050] Although the Eighth Circuit set aside Rules 51.315(b)-(f),[1051] the Supreme Court has reversed the Court of Appeals and affirmed

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[1044] *See infra*, Issue IV-1-AA.

[1045] Specifically, the final sentence of section 4.2.1.2 should be amended to read: "section 251(b)(5) traffic does not include traffic to Internet Service Providers." *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, at § 4.2.1.2.

[1046] Verizon IC Brief at 29.

[1047] *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9173, para. 45 (use of term "local" could mean either traffic subject to local rates or traffic that is jurisdictionally intrastate).

[1048] *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9157, 9193-94, 9199, paras. 8, 89 & n.177, 98.

[1049] Tr. at 1879; *see* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.2.

[1050] *Local Competition First Report and Order*, 11 FCC Rcd 16208.

[1051] *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8^{th} Cir. 2000).

those rules.[1052] We recognize that these rules were not in effect when we held the hearing in this proceeding, and when the parties filed their final proposed language and briefs.[1053] We nonetheless have a sufficient record upon which to base our decision. We find that, of the contract language properly before us, Verizon's language proposed to AT&T best incorporates rules 51.315(a)-(f) and the Supreme Court's decision by simply referring to "Applicable Law." With one minor modification, we adopt this language for inclusion in both the Verizon-AT&T and Verizon-WorldCom contracts.

b. Positions of the Parties

317. WorldCom proposes two paragraphs of language governing UNE combinations. Verizon challenges three aspects of this proposal: WorldCom's language relating to (i) UNEs that are "ordinarily" and "currently" combined; (ii) the pricing of UNE combinations; and (iii) the effect of a change in applicable law. With respect to the first area of dispute, WorldCom proposes language stating that: "At MCI's request . . . Verizon shall provide Combinations of Network Elements ordinarily combined in its network, whether or not those Network Elements are currently combined in Verizon's network."[1054] While WorldCom initially relied on Rule 51.315(a) as the basis for this provision,[1055] it has more recently argued that "the Supreme Court's reinstatement of Rules 51.315(c)-(f) removes any doubt which may have existed regarding the validity of WorldCom's proposed terms."[1056] Specifically, WorldCom argues that, pursuant to rule 51.315(c), Verizon "plainly cannot refuse to provide ordinarily combined elements merely because they are not combined at the moment the competitive carrier requests them."[1057]

[1052] *See AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 395 (1999); *Verizon Telephone Cos. v. FCC*, 122 S.Ct. 1646 (2002) (*Verizon*).

[1053] We note that WorldCom and Verizon both filed letters in recent weeks, supplementing their arguments regarding this issue to reflect the Supreme Court's action. *See* Letter from Jodie L. Kelley, Counsel to WorldCom, to Jeffrey Dygert, Assistant Bureau Chief, Wireline Competition Bureau, Federal Communications Commission, May 17, 2002 (WorldCom May 2002 Letter); Letter from Kelly L. Faglioni, Counsel to Verizon, to Jeffrey Dygert, Assistant Bureau Chief, Common Carrier Bureau, Federal Communications Commission, July 10, 2002 (Verizon July 2002 Letter).

[1054] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 2.4.

[1055] WorldCom argued that rule 51.315(a) has never been vacated, and by its plain meaning codifies a portion of paragraph 296 of the *Local Competition First Report and Order*, which states that "[i]incumbent LECs are required to perform the functions necessary to combine those elements that are ordinarily combined within their network in the same manner in which they are typically combined." WorldCom Brief at 16. WorldCom also claimed that by not allowing access to existing UNE combinations that are not already combined at the location requested, Verizon's language would run afoul of both the Act's non-discrimination provisions and the Commission's implementing regulations that mandate access to a UNE that is "at least equal in quality to that which the incumbent LEC provides to itself." WorldCom Brief at 99.

[1056] WorldCom May 2002 Letter.

[1057] *Id.* at 1.

318. As noted above, WorldCom's proposal also contains language regarding the pricing of UNE combinations, as well as "change of law" language specifically relating to rules 51.315(c)-(f). WorldCom's pricing language would limit Verizon's charges for combinations to the TELRIC price for the sum of the network elements that comprise the combination.[1058] WorldCom's "change of law" language states that "in the event a court of competent jurisdiction declares lawful the FCC's Rules 51.315(c)-(f), . . . Verizon agrees to provide such novel combinations in accordance with the terms of that rule."[1059]

319. WorldCom opposes Verizon's proposed language relevant to Issue III-6 because it "consists almost entirely of statements about what [Verizon] will not do, what it does not promise, and what cannot be inferred by anything it may voluntarily provide."[1060] WorldCom objects, for example, to Verizon's language that would require it to provide combinations "only to the extent required by Applicable Law," and enabling it to decline to provide combinations that are "not required by Applicable Law."[1061] WorldCom also objects to Verizon's proposed sections 1.4.1 and 1.4.2, which "essentially indicate only that if Verizon is required to provide UNE combinations pursuant to a change in law, the relevant terms will be contained in a Verizon tariff."[1062] Furthermore, WorldCom opposes Verizon's section 17, which asserts that Verizon will voluntarily provide a number of combinations, but only "to the extent provision of such Combination is required by applicable law."[1063] Finally, WorldCom argues that we should reject Verizon's proposed "anti-gaming" language that prohibits a potential WorldCom customer from ordering service from Verizon (which requires deployment of facilities) and then migrating the service to WorldCom.[1064] According to WorldCom, Verizon's proposed language acts as an "embargo" and gives Verizon "the unilateral right to abrogate its responsibilities under the Act," and limit WorldCom's right to compete for Verizon's existing customers.[1065]

320. Like WorldCom, AT&T proposes language that would require the provision of new combinations that are "ordinarily combined" in Verizon's network. However, AT&T relies

[1058] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 2.4.

[1059] *Id.*

[1060] WorldCom Reply at 85.

[1061] *Id.* at 86.

[1062] *Id.* at 85.

[1063] *Id.* at 85-86. Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 17.

[1064] *See* WorldCom Brief at 102; *see also* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 1.2.

[1065] *See* WorldCom Reply at 136. Verizon discusses its proposed "anti-gaming" and "embargo" language in Issue III-6. Although WorldCom responds to the Verizon proposal in discussing Issue VI-1-E, we determine that it is more appropriate to address the matter here.

instead on rule 51.315(b) for support.[1066] AT&T argues that this language is consistent with the Commission's conclusion in the *Local Competition First Report and Order* that "the proper reading of the 'currently combines' language in Rule 51.315(b) means those UNEs 'ordinarily combined within [the incumbent's] network, in the manner in which they are typically combined.'"[1067] AT&T further argues that any other interpretation of rule 51.315(b) would generally frustrate the development of competition and deny a competitive LEC access to the rapidly expanding and lucrative demand for residential second lines.[1068] Thus, according to AT&T, competitive LECs would be unable to provide telecommunications services ubiquitously in Virginia and compete with Verizon absent such an interpretation of the rule.[1069] AT&T also proposes specific contract language permitting Verizon to charge only the "direct economic cost of providing" UNE combinations; permitting AT&T to combine UNEs and other services (including "Access Services") obtained from Verizon; permitting AT&T to use UNEs and UNE combinations to "provide telecommunications services" to itself; and language relating to the combination of "contiguous" network elements.[1070]

321. Verizon proposes language with respect to AT&T that would require it to provide combinations of UNEs "to the extent required by Applicable Law." Verizon's proposal also includes a non-exclusive list of combinations that it offers, but again, limits its offering "to the extent required by Applicable Law."[1071] Verizon states that the proposal provides existing loop transport combinations in a manner consistent with the *Supplemental Order Clarification.*[1072] Verizon urges the rejection of AT&T's proposed language because, Verizon argues, it goes beyond the requirements of existing law.[1073]

[1066] *See* AT&T Brief at 105.

[1067] *See id.* at 104; AT&T Reply at 55-56. AT&T also argues that rule 51.315(b) applies to all UNE combinations other than "novel combinations." *Id.*

[1068] *See* AT&T Ex. 2 (Direct Testimony of M. Pfau), at 7-8.

[1069] *See* AT&T Ex. 1 (AT&T Pet.), at 107

[1070] *See* AT&T's November Proposed Agreement to Verizon, § 11.7.4. In response to Verizon's criticism of several of these terms, such as "direct economic costs," are undefined or lack specificity, AT&T responds that "[i]f Verizon does not like the phrase "economic costs of efficiently providing such combinations," it can suggest some other phrase that expresses the same thought." *See* AT&T Reply at 59.

[1071] *See* Verizon UNE Brief at 7. Verizon suggests that its proposal would not include those UNE-platform arrangements that require new construction, expansion of central office facilities or cable build-outs. *See* Verizon UNE Reply at 11; AT&T Brief at 107-108.

[1072] The *Supplemental Order Clarification* extended and clarified the temporary constraint on some loop/transport combinations as UNEs. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, 15 FCC Rcd 9587, 9592, para. 8 (2000) (*Supplemental Order Clarification*).

[1073] *See* Verizon UNE Brief at 8-9, 11.

322. The language Verizon initially proposed to WorldCom generally defines its obligations regarding combinations with reference to "applicable law," but includes additional language limiting its obligations. For example, Verizon's initial proposal makes clear that it has no obligation to provide UNE combinations not "currently combined" in Verizon's network, or to construct or deploy new facilities to offer UNE combinations.[1074] While Verizon has not expressly withdrawn this proposal, it submitted new contract language on July 10, 2002, and claimed that this new language reflects the Supreme Court's recent decision.[1075] Verizon rejects WorldCom's argument that rule 51.315(a) requires Verizon to provide combinations not already combined but that are "ordinarily combined" in the network, stating that this rule requires only that the incumbent LEC provide unbundled network elements in a manner "that allows *requesting telecommunications carriers* to combine such elements" but does not require the incumbent LEC to combine anything.[1076] In its recent supplemental submission, Verizon also contends that WorldCom's proposed language is inconsistent with rule 51.315(c) because it fails to reflect certain limits, recognized by the Court in *Verizon,* to an incumbent's duty to offer UNE combinations.[1077]

323. Verizon's proposal also includes an "anti-gaming" provision, which Verizon argues is necessary to prohibit WorldCom from inducing a Verizon customer to migrate the newly combined service over to WorldCom.[1078] According to Verizon, such a conversion would give WorldCom access indirectly to a new combination that it could not lawfully obtain directly.[1079] Verizon argues that this language targets WorldCom's conduct, and is not intended to prohibit customer migration to WorldCom. Moreover, Verizon suggests that the provision

[1074] *See* Verizon UNE Reply at 1-4. For example, Verizon contends that "for UNE-P, service that is considered 'currently combined' is a loop-port combination already combined at a particular location." For EELs, Verizon contends service that is considered 'currently combined' is a loop transport combination already combined at a particular location. Verizon states that it "will not offer any particular combination if Verizon is not legally required to do so."

[1075] *See* Verizon July 2002 Letter.

[1076] *See* Verizon UNE Reply at 7, quoting 47 C.F.R. §51.315(a) (emphasis supplied by Verizon).

[1077] *See* Verizon July 2002 Letter at 2-3 (citing *Verizon,* 122 S.Ct. at 1685, and arguing that WorldCom's proposal omits reference to technical feasibility and impairment of other carriers' access to UNEs).

[1078] *See* Verizon UNE Brief at 11-12. The Verizon proposed language provides that if Verizon provides notice to WorldCom that WorldCom has knowingly induced a Verizon customer to order services from Verizon with the primary intention of enabling WorldCom to convert those services to UNEs, and WorldCom fails to satisfactorily respond within 15 days, then Verizon shall have the right within 30 days advance written notice to institute an embargo on the provision of new services and facilities to WorldCom. *See* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 1.2.

[1079] *See* Verizon UNE Brief at 12.

would not apply when a customer orders services that require construction of facilities and later decides to change carriers.[1080]

c. Discussion

324. We adopt Verizon's language proposed to AT&T, with one minor modification, for inclusion in both the Verizon-AT&T and Verizon-WorldCom contracts.[1081] This language defines Verizon's obligations in this regard simply, with direct reference to "Applicable Law."[1082] We recognize that the recent changes in applicable law have largely rendered obsolete the parties' initial positions, and to a great extent their proposed contract language. In this context, we find it is particularly appropriate to adopt language that refers to applicable law, rather than to adopt one of the parties' out-of-date proposals, or Verizon's recently-filed proposal that lacks the benefit of response from petitioners. We note, however, that Verizon's brief specifically argued that "Applicable Law does not require Verizon VA to provide combinations that are not currently combined."[1083] Because this argument is now at odds with the reinstated rules and the Supreme Court's recent decision, we must emphasize that our adoption of Verizon's language does not carry with it an endorsement of Verizon's (out-of-date) interpretation of "Applicable Law."

325. We find it necessary to make one minor modification to Verizon's proposal. Verizon's proposal describes three types of combinations (UNE Platform, EELS and "Extended Dedicated Trunk Port") that it "may" offer under the contract. To ensure that this list is interpreted as being non-exclusive and illustrative of Verizon's obligation, we instruct the parties to change Verizon's proposal as described in the margin.[1084]

326. We decline to adopt any of the other language proposed under this issue. First, we reject AT&T's proposed language because, in several respects, it contains language that is ambiguous or inconsistent with current rules.[1085] Specifically, we note that AT&T's language refers to the "direct economic cost of providing" UNE combinations; establishes terms relating to the combination of "contiguous" network elements; and establishes that AT&T may use UNEs and UNE combinations "to provide telecommunications services to AT&T."[1086] We agree with

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[1080] *See id.*

[1081] We adopt Verizon's November Proposed Agreement to AT&T, §§ 11.7.5, 11.7.6, and 11.12 *et. seq.*

[1082] We reject WorldCom's argument that Verizon's use of the phrase "only to the extent required by Applicable Law" somehow relieves Verizon of some obligations otherwise conferred by law. We disagree, noting that Verizon does not make this assertion, and find that "Applicable Law" means "Applicable Law."

[1083] Verizon UNE Brief at 4.

[1084] The underlined phrase is thus inserted into the second sentence of Verizon's § 11.12, which shall read: "To the extent required by Applicable Law, such Combinations ~~may~~ shall include, but will not be limited to, the following Combinations as defined below… ."

[1085] We thus reject AT&T's November Proposed Agreement, § 11.7.4.

[1086] AT&T Reply at 59.

Verizon that AT&T failed to define these terms and describe their impact; furthermore, we note that these terms do not appear in the statute or in the Commission's relevant rules. Through the change of law process, AT&T will have ample opportunity, if it chooses, to explain why these provisions are consistent with rules 51.315(c) through (f), and the Supreme Court's ruling in *Verizon v. FCC*.[1087]

327. We also reject both parties' language proposed in the Verizon-WorldCom contract. While WorldCom suggests that its proposal is supported by rule 51.315(a), it does not suggest that its language addresses everything to which it is entitled under rules 51.315(c)-(f).[1088] We also note, as discussed above, that Verizon has challenged the extent to which WorldCom's language is, in fact, consistent with rule 51.315(c). Rather than prolong this proceeding to allow the parties additional time to litigate this issue, we believe the better approach would be for WorldCom – to the extent it seeks additional contract language beyond the incorporation of "Applicable Law" – to propose new language pursuant to the contract's change of law process. We also decline to adopt WorldCom's proposed language addressing "novel" combinations and what was, when the language was drafted, the *possible* reinstatement of rules 51.315(c)-(f).[1089] As we have indicated in several other contexts in this proceeding, we have chosen to adopt a single change of law provision governing all changes affecting the contract, rather than balkanize the contract's change of law process by adopting several provisions applicable only to certain sub-parts of the contract.[1090]

328. We also do not adopt Verizon's language – either its initial language, which it appears to have withdrawn, or its newly-filed language.[1091] Verizon's initial position clearly is inconsistent with the reinstated rules, to the extent it would not provide access to network elements that are not "currently combined." Furthermore, as indicated above, we decline to consider Verizon's newly-proposed contract language because WorldCom has not had an opportunity to respond to it, and we will not delay issuance of this order for the sake of this single issue. Moreover, because Verizon's language regarding new facilities deployment (contained in this rejected language) will not be included in the approved agreement, we need not address WorldCom's recently posed argument about Verizon's putative obligation to deploy new

[1087] *See* Verizon UNE Reply at 8-9. *See* also *Verizon*, 122 S.Ct. 1646.

[1088] Indeed, we note that WorldCom's language proposes access only to combinations of network elements that are "ordinarily combined" (*see* WorldCom's November Proposed Agreement, Part C, Att. III, § 2.4), while it is now entitled under rule 51.315(c), in certain instances, to network elements that are "not ordinarily combined."

[1089] We thus decline to adopt WorldCom's November Proposed Agreement to Verizon, Part C, Att. III, §§ 2.4 and 2.4.1.

[1090] *See, e.g.*, Issues IV-113/VI-1(E) *infra*.

[1091] We thus reject Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attachment, section 1.2, and the newly-proposed language contained in Verizon's July 2002 Letter.

facilities.[1092] We note, in any case, that WorldCom offers no contract language implementing this obligation.

329. We also reject Verizon's "anti-gaming" language contained in section 1.2.[1093] We agree with WorldCom that the Verizon language would limit WorldCom's ability to compete for customers. We recognize Verizon's concern that a competing carrier, if it were unable to obtain combinations in a particular instance, could induce Verizon customers to purchase certain services that could then be converted to UNE combinations. We conclude, however, that Verizon can adequately address this issue by offering lawful terms and conditions that provide volume or price incentives for customers to enter long term contracts and not switch to another carrier. Accordingly, we will not allow Verizon to use this agreement as a means to restrict competition for customers, or to limit a competitive LEC's ability to obtain access to UNEs or UNE combinations to the extent permitted by Commission rules. If Verizon is concerned about competitive LECs "gaming" the system or unforeseen loopholes not contemplated by Commission rules, then Verizon should seek modifications of those general rules rather than attempt, as here, to restrict carriers' access to UNEs through contracts.

2. Issue III-7-A (Service Disruption and OSS Degradation)

a. Introduction

330. AT&T and Verizon disagree about when service disruptions may occur during the process of converting special access service to an Enhanced Extended Link (EEL).[1094] AT&T proposes that such disruptions may only occur at its request; Verizon proposes that the parties must mutually agree to the disruption. The parties also disagree about the appropriate maintenance intervals to apply to a service arrangement after it is converted from a special access arrangement to an EEL. Verizon opposes AT&T's proposal to apply the same maintenance and repair intervals to the TELRIC-priced EEL as to the higher-priced, special access service. We adopt Verizon's proposed language requiring mutual agreement as to the circumstances when service disruption or physical disconnection cannot be avoided during conversion of special access services to EELs, and we reject AT&T's proposal that the service guarantees for special access should also apply to EEL arrangements. We also reject AT&T's language that it claims would "eliminate the need for lengthy negotiations following Commission resolution of the applicability of use restrictions."[1095]

[1092] *See id.* (in pertinent part, "Verizon shall have no obligation to construct or deploy new facilities or equipment to offer any UNE or Combination"); *see also,* WorldCom May 2002 Letter.

[1093] Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 1.2 (second through fifth sentences – starting with "Consistent with the foregoing..." through the end of the paragraph).

[1094] An EEL consists of a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport. *UNE Remand Order*, 15 FCC Rcd at 3703, Executive Summary.

[1095] AT&T Brief at 112, citing AT&T's November Proposed Agreement, § 11.13.1.

b. Positions of the Parties

331. AT&T proposes contract language that, absent its consent, forbids Verizon from physically disconnecting, separating, altering, or changing the equipment or facilities of a UNE combination during a conversion from special access services to EELs.[1096] AT&T claims that the physical disruption of combined elements is not permitted under existing rules and that there generally is no technical or other legitimate reason to interrupt service because the special access services and UNE combinations are physically identical, provide the same functions, and carry the same traffic to the same customers.[1097] According to AT&T, Verizon concedes that this conversion process is "essentially a billing process"[1098] and Verizon's new contract language contained in its brief is a "welcome step forward in the resolution of this issue between AT&T and Verizon."[1099]

332. AT&T also proposes language establishing that "protocols…reporting mechanisms and response times" for maintenance and repair of EELs should be the same as those applicable to the special access arrangement being replaced.[1100] AT&T argues that, just as there is no need to disrupt the physical configuration during a special access service conversion, there is no basis for degrading or disrupting the operational processes supporting the delivery of service.[1101] AT&T contends its proposed language is an express acknowledgment of the Commission's requirement that Verizon may not "disconnect" OSS UNEs employed to support EELs converted from special access if such a "disconnection" degrades the operational support delivered for EELs.[1102] AT&T asserts that Verizon has provided no justification for its contention that voice grade dial tone is the proper analogue for EELs converted from special access.[1103] Moreover, AT&T argues that Verizon can no longer claim that special access is not a "retail analogue" (as opposed to a wholesale service) since Verizon testified before the New Jersey Board of Public Utilities (New Jersey Board) that "[s]pecial access services are retail services, which are sold to end user as well as CLECs."[1104] Finally, on a related matter, AT&T contends

1096 *See* AT&T Brief at 112-13.

1097 *See id.* at 113.

1098 *Id.*, citing Tr. at 95.

1099 AT&T Reply at 61, citing Verizon UNE Brief at 18.

1100 *See* AT&T's November Proposed Agreement, § 11.13.5.2.

1101 AT&T Brief at 115.

1102 *Id.*, citing 47 C.F.R. § 51.315(b). *See also* AT&T Reply at 62.

1103 AT&T Reply at 63.

1104 *Id.* at 63, quoting *Application of Verizon New Jersey Inc. for FCC Authorization to Provide In-Region, InterLATA Service in New Jersey*, Docket No. TO01090541, Reply Measurements Declaration on Behalf of Verizon New Jersey Inc., Declarants: Julie A. Canny and Marilyn C. DeVito, at 7, para. 14 (Nov. 2001).

that the Commission is currently considering the applicability of restrictions on the conversion of special access to UNE combinations and, to prevent Verizon from delaying its implementation of this Commission decision, AT&T has proposed language eliminating the need for lengthy negotiations following the Commission's ruling.[1105]

333. Verizon argues that it has no intention of disrupting service during the conversion of special access service to EELs and would only do so when necessary.[1106] It contends that AT&T's language amounts to a blanket prohibition against any service disruption and, therefore, ignores reality.[1107] Verizon proposes alternative language that would prohibit disconnection or alteration of equipment and facilities during the conversion to EELs, "except upon mutual agreement of both Parties, e.g., in the event that the conversion cannot be accomplished without disconnecting, separating or altering such equipment or facilities."[1108]

334. Verizon also argues that there is no support for AT&T's assertion that maintenance of special access service is performed through an unbundled "OSS UNE."[1109] Furthermore, Verizon contends that AT&T misstates Verizon's parity obligations under the Act when it asserts that the EEL must be maintained at parity with the special access service that the EEL replaces.[1110] According to Verizon, parity of service requires it to "provide service to its retail customers similarly to that provided by CLECs using [UNEs]."[1111] Verizon argues that, in this instance, AT&T would use the EEL to provide dial tone service, the appropriate retail analogue is dial tone service, and the maintenance of the two should be equivalent.[1112]

c. Discussion

335. We adopt Verizon's proposed language, which requires the parties to agree as to the circumstances when physical disruption, disconnection, separation or alteration of the service ("service disruption") cannot be avoided during conversion of special access services to EELs.[1113]

1105 AT&T Reply at 60-61.

1106 Verizon UNE Brief at 16; Verizon UNE Reply at 14.

1107 Verizon UNE Reply at 15, citing Tr. at 246.

1108 Verizon UNE Reply at 15. Verizon also argues that AT&T concedes that some interruption may be necessary. *Id.* at 14, citing AT&T Ex. 2 (Direct Testimony of M. Pfau), at 17.

1109 Verizon UNE Reply at 15 & n.41, citing AT&T Brief at 115.

1110 Verizon UNE Reply at 16, citing AT&T Brief at 115.

1111 *Id.*, citing 47 C.F.R. § 51.311(b).

1112 *Id.*, citing Tr. at 262.

1113 *See* Verizon's November Proposed Agreement to AT&T, §§ 11.13.1, 11.13.2. We note that we reject Verizon's proposed sections 11.13.3. and 11.13.4 in Issue III-7-B; and adopt AT&T's proposed section 11.13.5.-5.1 and 11.13.4-4.1. in Issue III-7-B. Moreover, we reject AT&T's proposed section 11.13.6 in Issue III-7-C.

Also, we reject AT&T's contention that using voice dial tone line intervals -- and not special access intervals -- for maintenance and repair of EELs is tantamount to a degradation of service and a violation of Verizon's obligations under the Act.[1114] Finally, we reject AT&T's proposed section 11.13.1, finding that it is unnecessary.[1115]

336. We conclude that Verizon's language offers an acceptable resolution to the issue of service disruption because it recognizes that, in general, service should not be interrupted, and that AT&T's assent is required where service disruption must occur.[1116] AT&T recognizes that there are limited circumstances where service disruption may be necessary,[1117] but it is concerned with interruptions during the conversion process that might affect its ability to provide service to its customers.[1118] While we agree that AT&T's service disruption concerns are reasonable, we note that Verizon states it "will not disrupt existing service during conversion except when necessary."[1119] We find that Verizon addresses AT&T's concerns by proposing language that requires it first to obtain AT&T's permission before intentionally disrupting service. We determine that by notifying AT&T, as opposed to acting unilaterally, Verizon likely will mitigate customer inconvenience.

337. We disagree with AT&T's contention that it is a violation of Verizon's parity obligations under the Act, or tantamount to a degradation in service, to apply UNE reporting mechanisms and standards after the service is converted. We thus decline to adopt the language proposed by AT&T.[1120] AT&T's proposal would have the practical effect of grandfathering performance intervals or guarantees offered under Verizon's special access tariff. We agree with Verizon that, when an individual end user of a special access arrangement converts the service to UNEs, the maintenance and repair intervals formerly applicable to that special access arrangement no longer apply. Instead, because AT&T would now be providing service to the end user using UNEs, the performance standards applicable to UNEs in Virginia would apply. We note that the performance standards set by the Virginia Commission relating to UNEs may be more stringent, less stringent, or the same as Verizon's performance guarantees relating to special access service.

[1114] AT&T Brief at 116. Accordingly, we reject AT&T's proposed section 11.13.5.2. We also reject Verizon's proposed section 11.13.4.

[1115] *See* AT&T's November Proposed Agreement to Verizon, § 11.13.1.

[1116] Verizon UNE Reply at 15.

[1117] However, Verizon and AT&T differed over whether any of those limited circumstances apply to the conversion process from special access to EELs. Verizon UNE Brief at 17-18; AT&T Brief at 114-15.

[1118] AT&T apparently is seeking assurance of a seamless process where there would be *no* service interruption during any type of service conversion, including but not limited to a conversion from special access to EELs. *See* Verizon UNE Brief at 16-17, Verizon UNE Reply at 14.

[1119] *See* Verizon UNE Brief at 16.

[1120] We reject AT&T's November Proposed Agreement to Verizon, § 11.13.5.2.

338. Lastly, we reject AT&T's proposed section 11.13.1, which provides that AT&T may substitute UNEs (including combinations of UNEs), which provide identical functionality, for any service, except as provided by Commission rule or order in effect on the date and time AT&T submits the conversion order.[1121] AT&T has failed to explain how the contract's change of law provision is inadequate to address its concern of any Verizon delay in implementing new Commission requirements. Moreover, based upon the record before us, it is unclear what services, other than special access services, AT&T seeks to convert to UNEs. Verizon has a contractual obligation to provide AT&T with nondiscriminatory access to UNEs, including combinations of UNEs, at any technically feasible point and including all of the UNE's features, functions and capabilities.[1122] Because AT&T has not identified why it requires the broadly worded language set forth in its section 11.13.1, we determine that language already agreed to by the parties is sufficient to address AT&T's rights with respect to UNEs, including combinations.[1123]

3. Issues III-7-B/VII-11 (Bulk Ordering)[1124]

a. Introduction

339. AT&T and Verizon disagree on two issues related to the bulk ordering process for UNE conversions: (i) whether billing changes associated with a conversion from special access to EELs should be effective immediately, or at the beginning of the following month; and (ii) whether Verizon's bulk ordering process should be subject to its change management process.[1125] As set forth below, we adopt AT&T's proposed language regarding the effective date of billing changes and the change management process, but reject AT&T's arguments raised under this issue regarding termination fees.

b. Positions of the Parties

340. First, AT&T proposes that the effective date for any billing change associated with an EELs conversion should be the date that Verizon receives all required conversion

[1121] *See* AT&T's November Proposed Agreement to Verizon, § 11.13.1.

[1122] *See* Verizon's November Proposed Agreement to AT&T, § 11.0; AT&T's November Proposed Agreement to Verizon, § 11.0.

[1123] As noted above, we adopt Verizon's proposed section 11.13.1, which provides that it will permit AT&T to convert eligible special access services to EELs in accordance with applicable state and federal requirements. *See* Verizon's November Proposed Agreement to AT&T, § 11.13.1.

[1124] We note that the parties describe Issue VII-11 as identical to III-7-B. AT&T Brief at 154; Verizon UNE Brief at 13 n.14.

[1125] We address the parties' arguments regarding termination liability fees in the following issue, III-7-C.

information from AT&T.[1126] AT&T contends that conversion from special access to EELs usually requires no physical work, and involves little more than a billing change. Accordingly, AT&T argues that Verizon's proposal to delay applying the new rate until the beginning of the next month is unwarranted.[1127] Second, AT&T proposes language specifying that Verizon's bulk ordering guidelines should be subject to its formal change management procedures.[1128] According to AT&T, the guidelines are simply pages on a web site that Verizon could change informally and unilaterally.[1129]

341. Verizon objects to AT&T's proposal regarding effective billing dates, and argues that it is reasonable for it to make billing changes associated with special access conversions on the first day of the following month (*i.e.,* 30 calendar days or less from the time Verizon receives a conversion request).[1130] While Verizon recognizes that conversion is "essentially no more than a billing change, [it] must still have ample time to make the necessary administrative changes to accommodate a CLEC request."[1131] Moreover, according to Verizon, its conversion procedures are uniform for all competitive LECs, and that competitive LECs benefit from having one conversion date for all requests in a month.[1132] Verizon opposes AT&T's language that references the Verizon change management process; Verizon claims the AT&T language is unnecessary because AT&T "incorrectly assumes that Verizon VA will not follow the change of control process currently in place."[1133]

c. Discussion

342. We agree with AT&T that it should receive the benefit of the UNE rates on the date Verizon that receives all of the required information relating to an EELs conversion, and thus adopt AT&T's proposed language on this point.[1134] While we recognize that Verizon may

[1126] *See* AT&T Brief at 119; AT&T's November Proposed Agreement to Verizon, § 11.13.5.1 (stating, in part, that "the conversion order shall be deemed to have been completed effective upon receipt by Verizon of notice from AT&T, and recurring charges set forth in Exhibit A of this Agreement applicable to unbundled Network Elements shall apply as of such date. . . .").

[1127] AT&T Brief at 119.

[1128] *Id.* at 118-119; AT&T Reply at 66.

[1129] AT&T Brief at 119.

[1130] Verizon UNE Reply at 16, citing Tr. at 273-74.

[1131] Verizon UNE Brief at 19.

[1132] Verizon UNE Reply at 17, citing Tr. at 101.

[1133] *Id.* at 16-17; *see also* Tr. at 271-73.

[1134] Accordingly, we adopt AT&T's November Proposed Agreement to Verizon, § 11.13.5.1 and we reject Verizon's November Proposed Agreement to AT&T, § 11.13.4 . We also adopt AT&T's proposed section 11.13.4, which provides that AT&T may request any number of conversions in a single notice.

require time to make administrative changes to accommodate a competitive LEC's request for conversion from special access to EELs, it has not explained why AT&T must wait for it to complete these tasks before it is entitled to the new billing rate. We thus agree with AT&T that it is the effective billing date, not the actual completion date of the conversion, that is relevant. We also note that AT&T's proposed language allows for a different process where disconnection or other physical work is required to effectuate a conversion.[1135] Accordingly, we find that Verizon must offer AT&T the UNE rate upon receiving a complete conversion order.

343. We also adopt AT&T's proposed language regarding the change management process.[1136] Verizon indicates that it has "consistently" followed the change management process when making changes to the EELs conversion process in the past, and suggests that AT&T unfairly assumes that it will not follow this process in the future.[1137] Verizon thus does not suggest that the reference to the change management process is improper, only unnecessary. We thus find it reasonable to include AT&T's language it in the agreement, to the extent it accurately reflects the parties' current practices and future expectations. Finally, we reject AT&T's argument about Verizon's "linkage" of termination fees to bulk ordering.[1138] AT&T fails to identify any specific Verizon language to which it objects and, in any case, we reject AT&T's arguments regarding termination liability in the next section, Issue III-7-C.

4. Issue III-7-C (Termination Liability)

a. Introduction

344. AT&T and Verizon disagree on whether early termination fees should apply when the facilities used to serve an end-user are converted from special access to a UNE combination, such as an EEL.[1139] AT&T's proposed language would have the effect of canceling the early termination provisions contained in Verizon's special access tariffs or other service contracts between the parties.[1140] We reject AT&T's proposed language.

b. Positions of the Parties

[1135] *See* AT&T's November Proposed Agreement to Verizon, § 11.13.5.1 (providing for pro-rated charges based upon the earlier of when Verizon committed to complete the work, or the actual completion date); *see also* AT&T Brief at 119-120.

[1136] *See* AT&T's November Proposed Agreement to Verizon, § 11.13.4.1.

[1137] Verizon UNE Reply at 17; *see also* Tr. at 271-73.

[1138] *See* AT&T Brief at 118.

[1139] AT&T Brief at 120-126.

[1140] AT&T's November Proposed Agreement to Verizon, § 11.13.6.

345. AT&T argues that termination liabilities should not apply to the process of converting from special access to EELs for four reasons.[1141] First, according to AT&T, an access-to-EELS conversion does not qualify as a termination or cessation of service – rather, it is simply a billing change, and the end user would still continue to receive service.[1142] Second, AT&T contends that after the passage of the Telecommunications Act of 1996 Verizon did not make UNE combinations available at TELRIC prices, thus "AT&T was faced with the choice to either to cease serving customers or pay Verizon's inflated special access charges."[1143] Since it had no effective alternative to special access service as a means of serving its customers, AT&T argues it should not be held to the termination liabilities that Verizon imposed on those services by tariff or contract.[1144] AT&T concedes that such termination fees should apply to changes or cancellations of special access contracts that it may enter in the future and, thus, seeks to avoid these provisions only for service purchased during the period Verizon refused to offer UNE combinations.

346. Third, AT&T points out that the *UNE Remand Order* states "any substitution of unbundled network elements for special access would require the requesting carrier to pay any *appropriate* termination penalties under volume or term contracts."[1145] AT&T argues that in this instance termination fees are, in fact, not appropriate because to maintain such fees would permit Verizon both to recoup the monopoly profits implicit in special access pricing, and to recover its costs under the TELRIC pricing scheme.[1146] Finally, AT&T points out that Verizon waives contractual early termination fees for its own retail customer in other contexts – for example, when Verizon initiates a rate decrease, or Verizon makes available a more efficient network configuration.[1147]

347. Verizon argues that the *UNE Remand Order* expressly envisions the payment of "*any* appropriate termination penalties required under volume or term contracts."[1148] Verizon

[1141] AT&T Brief at 120.

[1142] *Id.*

[1143] *Id.* at 121.

[1144] *Id.* AT&T argues that, in concept, its predicament is no different from the "fresh look" initiative that allowed customers to terminate Tariff 12 services without termination liabilities when 800 numbers became portable in the early 1990s. *Id.* AT&T states that "five years of legal challenges by Verizon . . . denied AT&T the ability to make practical use of special access-to-EEL conversions, from the time of the passage of the Act until now, and . . . until the Commission decides the applicability of the interim use restrictions." AT&T Reply at 68.

[1145] AT&T Brief at 121, citing *UNE Remand Order*, 15 FCC Rcd at 3912, para. 486 n.985 (emphasis supplied by AT&T).

[1146] *Id.* at 121-22.

[1147] *Id.* at 122-24; AT&T Reply at 70.

[1148] Verizon UNE Reply at 18, citing *UNE Remand Order*, 15 FCC Rcd at 3912, para 486 n.985 (emphasis added).

contends that the Commission affirmed this approach in approving Verizon's section 271 application in Pennsylvania and other states, when it held that "current rules do not require incumbent LECs to waive tariffed termination fees for carries requesting special access circuit conversion."[1149] Verizon further contends that its rates for service are not extortionate because, when AT&T ordered special access services from Verizon, it had a choice of rates, depending on the length of commitment it agreed to. One of the requirements for obtaining the lower rates over the longer term, however, was acceptance of a termination penalty.[1150]

c. Discussion

348. We reject AT&T's proposed language and decline to override the termination penalties contained in Verizon's special access tariffs.[1151] AT&T voluntarily purchased special access services pursuant to Verizon's filed tariff and took advantage of discount pricing plans that offered lower rates in return for a longer term commitment.[1152] We will not nullify these contractual arrangements that AT&T previously accepted. AT&T's argument about the meaning or applicability of Verizon's tariff language (*i.e.,* whether "conversion" qualifies as "termination") is not appropriate for resolution in this proceeding. Also, because AT&T has not challenged the *amount* of the penalties, but merely their existence, the record does not permit us to determine whether the existing penalties are not "appropriate," as set forth in the *UNE Remand Order*.

5. Issue III-8 (Interconnection at any Technically Feasible Point)[1153]

a. Introduction

349. WorldCom proposes contract language establishing that Verizon must provide WorldCom with interconnection at any technically feasible point, for the purpose of obtaining access to UNEs and UNE combinations, without requiring WorldCom to collocate.[1154] Verizon objects to this language and suggests that its own proposal is consistent with the Commission's

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[1149] *Id.*, citing *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17461, para. 75 (2001) (*Verizon Pennsylvania Order*).

[1150] Verizon UNE Reply at 20.

[1151] Thus, we reject AT&T's proposed section 11.13.6. According to Verizon, its FCC Tariff No. 1, on file with Commission, provides for termination liability. We find that any relevant termination liability provisions found in the Verizon tariff and associated with conversion from special access to EELs shall apply.

[1152] Verizon UNE Brief at 21; Tr. at 224.

[1153] In its brief, AT&T states that this issue is the same as Issue III-11. *See* AT&T Brief at 126. Consequently, we will discuss AT&T's arguments and its proposal in Issue III-11, *infra*.

[1154] *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 2.5.

rules.[1155] Specifically, Verizon's proposal provides that, except as otherwise expressly stated in the contract, WorldCom may access Verizon's UNEs only via collocation.[1156] For reasons provided below, we reject both parties' proposals and determine that language we adopt elsewhere is adequate to address the parties' concerns.

b. Positions of the Parties

350. WorldCom argues that its proposal is consistent with the Act and the Commission's holding that an incumbent cannot offer collocation as the only method of allowing a competitor to access and recombine UNEs.[1157] WorldCom argues that Verizon's proposal, on the other hand, would effectively allow Verizon to limit WorldCom's options to collocation and, thus, is directly at odds with Commission precedent.[1158] According to WorldCom, although Verizon argues that it permits carriers to obtain access to UNEs through other means, Verizon concedes that its proposed list of alternatives to collocation does not contain all technically feasible methods.[1159] Moreover, WorldCom argues that Verizon's reliance on the Bona Fide Request (BFR) process does not satisfy Verizon's obligations because, under that process, the ultimate decision to approve a request for a particular method of access to UNEs rests solely with Verizon.[1160] WorldCom also notes the BFR process places the burden on WorldCom to demonstrate that a particular method of obtaining access to UNEs is technically feasible.[1161]

351. Verizon argues that its proposed contract language offers access to UNEs and UNE combinations in several different ways and with express reference to applicable law.[1162] Verizon asserts that its position has never been that collocation is the only means of accessing its UNEs.[1163] According to Verizon, if WorldCom seeks a "technically feasible point" of access to UNEs other than collocation or other methods expressly identified in the contract, it may request

[1155] Verizon UNE Brief at 28-34.

[1156] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 1.7.

[1157] WorldCom Brief at 103, citing Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 1.7; 47 C.F.R. § 51.307(a); *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20701, para. 164 (1998) (*Second BellSouth Louisiana Order*) (stating that incumbents cannot limit a competitor's choice to collocation as the only method for gaining access to and recombining UNEs).

[1158] WorldCom Brief at 103.

[1159] WorldCom Brief at 103-04, citing Verizon Ex. 23 (UNE Additional Direct Testimony), at 9-10; Tr. at 113-14.

[1160] WorldCom Reply at 89.

[1161] *Id.* at 88-89.

[1162] *See* Verizon UNE Brief at 29 (describing the means to obtain access to particular UNEs).

[1163] Verizon UNE Reply at 21, citing Verizon Ex. 23, at 8-9.

such access through the BFR procedure.[1164] Verizon contends that WorldCom's proposal is a "blanket prohibition against collocation" and is, therefore, contrary to both law and practice because collocation is generally required for access to many UNEs.[1165] Finally, Verizon argues that its proposed language to WorldCom is substantially similar to that agreed to by AT&T, and that both proposals confirm Verizon's intention to comply with the Commission's rules and all other applicable law, and provide the petitioners with all the necessary assurances that Verizon will provide access to UNEs in an appropriate and lawful fashion.[1166]

c. Discussion

352. For reasons described below, we reject both WorldCom's proposed section 2.5 and Verizon's proposed section 1.7 as being inconsistent with Commission rules and precedent.[1167] We find that language that exists elsewhere in the proposed agreement is sufficient to address the issue presented by the parties. Specifically, under Verizon's proposed section 1.1, which we adopt in Issue IV-15 below, Verizon is obliged to provide UNEs in accordance with applicable law.[1168] We determine that this language, together with our findings herein, adequately addresses the parties' disagreement about their rights regarding collocation and access to UNEs. Neither WorldCom nor Verizon has established that adoption of their additional language is warranted.

353. Verizon's proposed language is inconsistent with the Commission's rules. While it may be true as a practical matter that a competitor would have to collocate to obtain a particular UNE, Commission precedent does not support generally requiring a competitor to collocate at an incumbent LEC's facilities in order to gain access to UNEs.[1169] Verizon fails to demonstrate how such a general provision is consistent with its statutory obligation to provide access to UNEs "at any technically feasible point."[1170] Moreover, we agree with WorldCom that forcing it to use the contract's BFR process to obtain access to UNEs other than through collocation would impermissibly shift the burden of demonstrating technical feasibility onto WorldCom. The Commission's rule 51.321(d) expressly provides that an incumbent that denies a

[1164] Verizon UNE Brief at 30, citing Verizon's November Proposed Agreement to WorldCom, Ex. B.

[1165] *Id.* at 33.

[1166] *Id.* at 34, citing Verizon's November Proposed Agreement to AT&T, § 11.0; Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 1.

[1167] WorldCom's November Proposed Agreement to Verizon, Attach. III, § 2.5; Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 1.7.

[1168] *See* Issue IV-15 *supra*; Verizon's November Proposed Agreement to WorldCom, Network Elements Attach., § 1.1.

[1169] *See, e.g., Net2000 Communications, Inc. v. Verizon-Washington D.C., Inc. et al.*, FCC 01-381, Memorandum Opinion and Order, 17 FCC Rcd 1150, 1158 at para. 26 (2002).

[1170] 47 U.S.C. § 251(c)(3).

competitor's request for a particular method of obtaining access to UNEs must demonstrate to the state commission that the requested method of obtaining such access is not technically feasible.[1171] In addition, rejecting Verizon's proposal is consistent with our findings below in Issue V-2, where we disagree with Verizon's assertion that the petitioner (in that issue, AT&T) must be collocated in order to purchase UNE dedicated transport.[1172]

354. We also reject WorldCom's proposal. As noted above, we find that WorldCom's introductory provision on network elements, which we adopt in this proceeding, is adequate to ensure that it may obtain access to Verizon's UNEs in accordance with applicable law, which includes its rights under section 251(c) to access UNEs using any technically feasible method and to collocate necessary equipment.[1173] We reject WorldCom's proposed language not simply because it is unnecessary, but also because it is ambiguous and possibly inconsistent with the Commission's rules. We agree with Verizon that, because WorldCom currently does, and for practical reasons must, collocate to obtain access to most UNEs, it makes little sense to include language phrased as an outright bar on requiring collocation. We also agree with Verizon that WorldCom's proposed language appears to conflict with Commission precedent in at least one circumstance, to the extent that the Commission has established that, under certain circumstances, a requesting carrier must collocate to obtain EELs.[1174] Given the choice between two ambiguous provisions with unsteady bases in Commission precedent, we find that the better alternative is to rely on language – that exists already in the adopted contract – referring to "applicable law."

6. Issue III-9 (Four-line Switching Exception)

a. Introduction

355. In the *UNE Remand Order*, the Commission determined that "requesting carriers are not impaired without access to unbundled local circuit switching" in certain circumstances.[1175] The Commission adopted rule 51.319(c)(2), which states:

> Notwithstanding the incumbent LEC's general duty to unbundle local circuit switching, an incumbent LEC shall not be required to unbundle local circuit switching for requesting telecommunications carriers when the requesting telecommunications carrier serves

[1171] 47 C.F.R. § 51.321(d).

[1172] *See* Issue V-2 *infra*.

[1173] *See* WorldCom's November Proposed Agreement to Verizon, Attach. III, § 1.1; 47 C.F.R. § 51.321(a).

[1174] For example, the Commission has expressly recognized that to avail itself of two of the three local usage options to obtain the EEL combination, a requesting carrier must collocate in at least one incumbent LEC central office. *See Supplemental Order Clarification*, 15 FCC Rcd at 9598-99, para. 22. *See also* Verizon UNE Brief at 29.

[1175] *UNE Remand Order*, 15 FCC Rcd at 3823, para. 278.

> end-users with four or more voice grade (DS0) equivalents or lines, provided that the incumbent LEC provides nondiscriminatory access to combinations of unbundled loops and transport (also known as the 'Enhanced Extended Link') throughout Density Zone 1, and the incumbent LEC's local switches are located in . . . [t]he top 50 Metropolitan Statistical Areas . . . and [i]n Density Zone 1 . . . .[1176]

We address below seven issues regarding the scope of this exception to Verizon's obligation to unbundle local switching. According to petitioners, the resolution of these issues will affect their ability to serve some small businesses profitably in the event Verizon invokes the local switching exception in Virginia. We note that Verizon has not invoked that exception and therefore currently must offer local switching as a UNE throughout Virginia.[1177]

356. The first issue concerns whether "end-users," as used in rule 51.319(c)(2), should be counted on a "per location" basis, as AT&T and WorldCom contend, or on a "per customer" basis, as Verizon urges. We accept AT&T's and WorldCom's position on this issue. In the second issue, AT&T and WorldCom dispute Verizon's position that the usage restrictions adopted in the *Supplemental Order* and *Supplemental Order Clarification* limit its obligation to provide access to enhanced extended links (EELs) under rule 51.319(c)(2).[1178] As explained below, we decline to resolve this issue at this time. The remaining five issues relate to AT&T's proposed contract language. This language would limit, both through advance notice provisions and what AT&T refers to as "quasi grandfathering," Verizon's ability to charge market-based prices for local switching, rather than prices based on the Commission's total element long-run incremental cost (TELRIC) methodology, in the event Verizon invokes the local switching exception. This language also sets forth AT&T's interpretation of "voice grade (DS0) equivalents or lines" in rule 51.319(c)(2); requires that Verizon list in an appendix to the agreement the offices for which it may invoke the local switching exception; and includes a

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[1176] 47 C.F.R. § 51.319(c)(2).

[1177] *See* Verizon UNE Brief at 35.

[1178] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order, 15 FCC Rcd 1760 (2000) (*Supplemental Order*) (subsequent history omitted); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, 15 FCC Rcd 9587 (2000) (*Supplemental Order Clarification*) (subsequent history omitted). In the *Supplemental Order*, the Commission determined that an incumbent need not allow IXCs to convert special access services to EELs, except where a competitive LEC would use the EEL to provide "a significant amount of local exchange service," in addition to exchange access service, to a particular customer. *Supplemental Order*, 15 FCC Rcd at 1762, para. 5. In the *Supplemental Order Clarification*, the Commission determined that a requesting carrier is providing "a significant amount of local exchange service" to a particular customer if it meets at least one of three safe harbors. *Supplemental Order Clarification*, 15 FCC Rcd at 9598-600, para. 22. An EEL consists of a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport. *UNE Remand Order*, 15 FCC Rcd at 3703, Executive Summary.

unique change of law provision governing only the local switching exception. We rule against AT&T on these issues, except to the extent Verizon has accepted AT&T's position.

357. WorldCom and Verizon propose virtually identical language for the portion of their contract addressing the local switching exception,[1179] and we find both proposals consistent with the Communications Act and the Commission's rules. Because we find for WorldCom regarding the meaning of "end user," we adopt the rest of its uncontested language.[1180] The language regarding the local switching exception that Verizon proposes for its contract with AT&T differs significantly both from its proposal to WorldCom and from AT&T's proposed language.[1181] As explained below, we find AT&T's language to be inconsistent with rule 51.319(c)(2) in significant respects. We therefore adopt Verizon's proposal to AT&T, which is consistent with that rule, except as noted below.

b. Meaning of End-User

(i) Positions of the Parties

358. Under rule 51.319(c)(2), an incumbent LEC need not provide local switching as a UNE when the requesting telecommunications carrier serves "end-users with four or more voice grade (DS0) equivalents or lines" and certain other conditions are met.[1182] AT&T and WorldCom propose language that would limit application of this exception to situations where the requesting carrier provides four or more lines to a single customer location.[1183] They argue that counting lines on a "per location" basis is consistent with the impairment analysis that led the Commission to adopt the local switching exception, and that counting lines on a "per customer" basis would be inconsistent with that analysis.[1184] They contend that, in adopting the local switching

[1179] *Compare* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 9.1, *with* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 7.1.

[1180] WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 7.1. Because we accept WorldCom's proposed language, we dismiss as moot WorldCom's motion to strike Verizon's prior proposal regarding this issue. *See* WorldCom Motion to Strike at Ex. A at 12-13.

[1181] *Compare* Verizon's November Proposed Agreement to AT&T, § 11.4.1.5, *with* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 9.1, & AT&T's November Proposed Agreement to Verizon, §§ 11.4.1.5-11.4.1.5.11.

[1182] 47 C.F.R. § 51.319(c)(2).

[1183] AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.4 (proposing that the exception apply only with regard "to a single end user customer account name, at a single physical customer location"); WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 7.1 (proposing that the exception would apply to "customers who have four or more voice grade (DS0) or equivalent lines at one location"); *see* AT&T Brief at 126-29; WorldCom Brief at 106-10.

[1184] AT&T Brief at 127; WorldCom Brief at 106; AT&T Reply at 71 (contending that customer locations, not customer identity, was the Commission's primary consideration in the Commission's impairment analysis).

exception, the Commission used line counts to signify a high volume of traffic. They maintain that a competitive LEC cannot economically connect its switch to individual lines scattered throughout a LATA and that Verizon's interpretation therefore would curtail competitive options available to customers.[1185] WorldCom states that, while in theory there may be billing efficiencies in dealing with one customer in multiple locations, as opposed to different customers in those locations, the Commission never discussed those efficiencies in adopting the local switching exception.[1186]

359. Verizon would apply the local switching exception to situations in which the requesting carrier provides the customer with four or more lines within the same LATA.[1187] It maintains that the exception applies on a "per customer," rather than "per location," basis.[1188] Verizon argues that it is appropriate to apply that exception to customers with four or more lines within a LATA because customer billing is done on a LATA-wide basis.[1189] Verizon states that underpinning the exception is the idea that a customer has competitive alternatives to local switching within the metropolitan statistical area (MSA). Verizon asserts that businesses with multiple locations have such alternatives and often order services for groups of locations together, and that that a customer's total number of lines within the LATA therefore is the appropriate measuring stick for determining where the exception applies.[1190]

(ii) Discussion

360. We conclude that the local switching exception applies on a "per location" basis; we therefore adopt AT&T's and WorldCom's proposed language on this point.[1191] We find that,

[1185] AT&T Brief at 128-29; AT&T Reply at 71; WorldCom Reply at 90-91.

[1186] WorldCom Brief at 107; WorldCom Reply at 90-91.

[1187] Verizon UNE Brief at 35-36. We note that Verizon's contract proposals do not reflect this single-LATA restriction. *See* Verizon's November Proposed Agreement to AT&T, § 11.4.1.5.1 (proposing that the exception apply when AT&T "serves end-users with four or more voice grade (DS0) equivalents or lines"); Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 9.1 (proposing that the exception apply when WorldCom serves "customers who have four or more voice grade (DS0) or equivalent lines in the density zone 1 of the Washington, D.C. and Norfolk-Virginia Beach-Newport News Metropolitan Statistical Areas").

[1188] Verizon UNE Brief at 36-37.

[1189] *Id.* at 35-36.

[1190] Tr. at 163-65 (testimony of Verizon witness Gilligan); Verizon UNE Brief at 36-38.

[1191] AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.4 (stating that a customer must meet the four line threshold "at a single physical customer location"; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 7.1 (stating that a customer must "have four or more voice grade (DS0) or equivalent lines at one location"). We reject the remainder of AT&T's proposed language regarding this issue. *See* AT&T's November Proposed Agreement to Verizon, §§ 11.4.1.5-11.4.1.5.3, 11.4.1.5.4 (first sentence to the extent it defines "single physical customer location"), 11.4.1.5.4 (remaining sentences), & 11.4.1.5.5-11.4.1.5.11. We find that AT&T has failed to justify this additional language.

unlike Verizon's interpretation, the petitioners' interpretation properly recognizes that the collocation, hot cut, and other costs that the purchase of local switching enables a competitive LEC to avoid are largely a function of customer location.[1192] We therefore also conclude that rule 51.319(c)(2) is best interpreted as applying when the competitive LEC is serving a customer that has four or more lines at a single location.

361. In adopting the four-line threshold, the Commission distinguished "certain high-volume customers" from those residential and small business customers for which unbundled local switching would continue to be available.[1193] Applying the local switching exception on a strict "per customer" basis could count lines located in different states, but there is no suggestion in the *UNE Remand Order* or the record in this proceeding that a customer with one line in each of four different states could ever be considered a high-volume customer.[1194] Indeed, in conceding that we should count only lines within the LATA in determining a customer's line total, Verizon implicitly recognizes that a "per customer" line count is ultimately untenable and that some limiting construction is necessary to salvage its position. Verizon suggests that its marketing and billing practices, which typically but not invariably are tied to a particular LATA,[1195] provide the basis for such a limitation.[1196] Verizon provides no indication, however, that the Commission was taking a LATA-by-LATA approach when it adopted the local switching exception.[1197]

362. In addition, the record before the Commission in the *UNE Remand* proceeding supports application on a "per location" basis. In adopting the four-line threshold, the Commission relied on an *ex parte* letter that defined customers at the "[l]ocation [l]evel."[1198] This letter stated that approximately 72 percent of the filing carrier's business customers had three lines or fewer at a single location.[1199] The Commission concluded, based in part on this letter, that unbundled local switching should continue to be available as a UNE for end users

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[1192] Tr. at 166-68 (testimony of AT&T witness Pfau and WorldCom witness Goldfarb); *cf. UNE Remand Order*, 15 FCC Rcd at 3830, para. 296 & n.577 (discussing collocation, hot cut, and other costs).

[1193] *UNE Remand Order*, 15 FCC Rcd at 3830-31, para. 297; *see also* Verizon UNE Brief at 36 (stating that the "underpinning of the four or more line exception is that the customer has competitive alternatives to local switching within the requisite MSA").

[1194] *See UNE Remand Order*, 15 FCC Rcd at 3822-32, paras. 276-99; Tr. at 114-21, 161-89.

[1195] *See* Tr. at 164-65.

[1196] Verizon UNE Brief at 38, citing Tr. at 164-65.

[1197] *See, e.g.,* Verizon UNE Brief at 35-41; *see also UNE Remand Order*, 15 FCC Rcd at 3822-32, paras. 276-99.

[1198] Letter from James K. Smith, Director Federal Relations, Ameritech, to Magalie R. Salas, Secretary, FCC, CC Docket No. 96-98, Attach. at 4 (filed Sept. 8, 1999), cited in *UNE Remand Order*, 15 FCC Rcd at 3831 n.580.

[1199] *See UNE Remand Order*, 15 FCC Rcd at 3831 n.580.

with three lines or fewer.[1200] The Commission's reliance on this letter suggests an analysis that focused on a "per location" threshold.

363. While the Commission did not state explicitly in the *UNE Remand Order* whether the four-line threshold should be applied on a "per location" basis, a subsequent determination by the Commission lends support to petitioners' argument. Specifically, in the *Local Competition and Broadband Reporting Order*, the Commission required LECs to report, among other information, the percent of total voice-grade equivalent lines they provide to residential and small business customers.[1201] The Commission stated that these customers would be identified "by separate billing addresses to which fewer than four lines are in service," in order to reflect "the definition of residential and small business customers that [it had] adopted to distinguish between the mass market and the medium and large business market in the *UNE Remand Order*."[1202] We find this order to be further indication that the Commission intended the local switching exception to be applied on a "per location" basis.

c. Access to EELs

(i) Positions of the Parties

364. AT&T proposes language that would require Verizon, in the event it invokes the local switching exception, to provide AT&T with access to EELs throughout the density zone for which the exception is invoked "without use restrictions of any kind."[1203] WorldCom proposes language that would require Verizon, in the event it invokes that exception, to provide WorldCom with "Non-Discriminatory access" to EELs throughout the relevant density zone.[1204] These parties argue that, in the event Verizon invokes the exception, it must provide EELs on an unqualified basis (*i.e.*, not subject to the restrictions set forth in the *Supplemental Order* and *Supplemental Order Clarification*).[1205] Specifically, WorldCom maintains that the *UNE Remand Order* requires incumbents that invoke the exception to provide EELs on an unqualified basis, that the *Supplemental Order* and *Supplemental Order Clarification* amended only certain

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1200 *Id.*, 15 FCC Rcd at 3830-31, para. 297.

1201 *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717, 7754, para. 77 (2000) (*Local Competition and Broadband Reporting Order*).

1202 *Local Competition and Broadband Reporting Order*, 15 FCC Rcd at 7754, para. 77 & n.206, citing *UNE Remand Order*, 15 FCC Rcd at 3829, paras. 292-94.

1203 AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.2.

1204 WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 7.1.

1205 AT&T Brief at 129; WorldCom Brief at 110-13; AT&T Reply at 75-76.

paragraphs of the *UNE Remand Order*, and that the amendments did not change any part of the Commission's discussion of unbundled local switching.[1206]

365. For its contract with AT&T, Verizon proposes language stating that it need not provide unbundled local switching when AT&T serves end users with four or more voice grade (DS0) equivalents or lines, "provided that [Verizon] complies with the requirements of 47 C.F.R. §51.319(c)(2)."[1207] For its contract with WorldCom, Verizon proposes language virtually identical to that proposed by WorldCom.[1208] Although Verizon proposes different language with respect to AT&T and WorldCom, its position on the contested issue is the same: unlike the petitioners, it contends that the usage restrictions set forth in the *Supplemental Order Clarification* limit its obligation under rule 51.319(c)(2) to provide access to EELs.[1209] Verizon states that after adopting the local switching exception in the *UNE Remand Order*, the Commission held that, absent a waiver, a competitive LEC may convert a customer's special access services to EELs only if it certifies that it meets at least one safe harbor provision.[1210] Verizon argues that nothing in the *Supplemental Order Clarification* finds or even suggests that an incumbent's invocation of the local switching exception would nullify the criteria that the Commission determined must be met by a competitive LEC before it can convert special access services to EELs.[1211]

(ii) Discussion

366. We accept Verizon's language proposed to AT&T requiring that Verizon comply with the requirements of rule 51.319(c)(2) as well as WorldCom's language requiring that Verizon provide access to EELs "in accordance with Applicable Law" in the event Verizon invokes the local switching exception.[1212] In both instances, the adopted language is consistent with current law because it refers directly to the relevant Commission rule and "Applicable

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1206 WorldCom Brief at 110-11.

1207 Verizon's November Proposed Agreement to AT&T, § 11.4.1.5.1.

1208 *Compare* Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 9.1 *with* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 7.1. We discuss the single difference between these proposals below.

1209 Verizon UNE Reply at 23.

1210 *Id.*, citing *Supplemental Order Clarification,* 15 FCC Rcd at 9598-600, para. 22.

1211 Verizon UNE Reply at 23.

1212 We thus adopt Verizon's November Proposed Agreement to AT&T, § 11.4.1.5.1; and WorldCom's November Proposed Agreement to Verizon, Part C, Attach. III, § 7.1. We note that the only difference between Verizon's and WorldCom's proposals for this part of their contract is that Verizon would define an EEL as "including multiplexing equipment," while WorldCom would define an EEL as "including multiplexing/concentration equipment." Because the Commission defined an EELs as including "multiplexing/concentrating equipment," (*see UNE Remand Order*, 15 FCC Rcd at 3703, Executive Summary), we find WorldCom's language preferable to Verizon's language.

Law." In accepting this language, we decline to decide whether Verizon's obligation to provide EELs, in the event it invokes the local switching exception, would be subject to the restrictions set forth in the *Supplemental Order* and *Supplemental Order Clarification.* Those orders neither address this issue directly nor make clear how it should be resolved. Given that Verizon has not invoked the exception in Virginia,[1213] we conclude that the best course is for us not to resolve this issue in this order. We note that, in the *Triennial UNE Review NPRM,* the Commission is in the process of reevaluating the local switching exception, including the requirement that incumbent LECs make EELs available as a precondition to taking advantage of the exception.[1214] Commission action in that proceeding may change the requirements of rule 51.319(c)(2) or otherwise alter the "Applicable Law" pertaining to Verizon's EELs-related obligations prior to any invocation of the local switching exception by Verizon. For the same reason, we reject AT&T's proposal that we require Verizon, in the event it invokes the local switching exception, to provide access to EELs "without use restrictions of any kind."[1215]

d. Advance Notice of Non-TELRIC Pricing

(i) Positions of the Parties

367. AT&T proposes language that would require Verizon to provide 180 days' advance notice before charging market-based prices, rather than TELRIC prices, for local switching, in the event Verizon invokes the local switching exception.[1216] AT&T contends that competitive LECs require a stable business environment to attract capital and that Verizon's offer of 30 days' advance notice is patently inadequate to allow for such stability.[1217] Verizon's proposed contract language contains no reference to a notice period,[1218] but it states in its brief that it will provide advance notice and argues that 30 days would be adequate.[1219] Verizon points

[1213] *See* Verizon UNE Brief at 35.

[1214] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, Notice of Proposed Rulemaking, 16 FCC Rcd 22781, 22806-08, paras. 56-60 (2001) (*Triennial UNE Review NPRM*).

[1215] AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.2.

[1216] *Id.*

[1217] Tr. at 186-88 (testimony of AT&T witness Pfau); AT&T Brief at 130-31; AT&T Reply at 74-75.

[1218] *See* Verizon's November Proposed Agreement to AT&T, §§ 11.4.1.5.1-11.4.1.5.6.

[1219] Verizon UNE Brief at 40; *see* Tr. at 187-88 (testimony of Verizon witness Gilligan) (offering 30 days advance notice).

out that AT&T has been on notice that Verizon may invoke the local switching exception since the Commission released the *UNE Remand Order* in November 1999.[1220]

(ii) Discussion

368. We rule for Verizon on this issue. The *UNE Remand Order* already has given AT&T abundant notice that Verizon may invoke the local switching exception in qualifying areas, and it did not recognize the need for a lengthy additional advance notice period. Contrary to AT&T's suggestion, we expect that the capital markets have already accounted for the potential that Verizon may invoke the local switching exception. Moreover, we find that AT&T has not shown that the notice period of 30 days would be unreasonably or unlawfully short. AT&T and Verizon shall reflect that notice period in their interconnection agreement.

e. "Quasi Grandfathering" of TELRIC Prices

(i) Positions of the Parties

369. AT&T proposes language that would preclude Verizon from applying non-TELRIC prices to unbundled local switching received or ordered before the effective date of Verizon's invocation of the exemption.[1221] This "quasi grandfathering" would extend, under AT&T's proposal, until the parties renegotiate the prices in the interconnection agreement.[1222] AT&T maintains that non-TELRIC pricing would make AT&T's rates non-competitive.[1223] Verizon maintains that the one direct and foreseeable result of an incumbent's exercise of the local switching exception is to move from providing local switching at a TELRIC rate to providing local switching at a non-TELRIC rate. Verizon also argues that the Commission's rules provide no support for AT&T's position.[1224]

(ii) Discussion

370. We rule for Verizon on this issue. AT&T's proposal would effectively nullify the local switching exception for AT&T's existing customers for the duration of the interconnection agreement. AT&T has failed to identify any support in applicable Commission precedent for such a result.

[1220] Verizon UNE Brief at 40.

[1221] AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.5.

[1222] AT&T Brief at 130; AT&T Reply at 75.

[1223] AT&T Reply at 75.

[1224] Verizon UNE Reply at 24-25.

f. Meaning of "Voice Grade (DS0) Equivalents or Lines"

(i) Positions of the Parties

371. AT&T proposes language that would allow Verizon to exercise the local switching exception only with regard to "2-wire unbundled [l]oops."[1225] AT&T argues that the phrase "voice grade (DS0) equivalents or lines" in rule 51.319(c)(2) applies to the quantity of two-wire loops that are capable of terminating on a circuit switch, not to the number of DS0s.[1226] AT&T states that, under Verizon's proposal, the four-line threshold could be reached on a single loop: for example, in a line splitting environment, if a carrier used the low frequency spectrum to provide a DS0 and the high frequency spectrum to support data transfer rates exceeding 192 kilobits per second (kbps) (the equivalent of three DS0s).[1227]

372. Verizon argues that AT&T's interpretation of the Commission's rule as counting only 2-wire unbundled loops is "tortured," and ignores the plain language of the rule, which clearly refers to "voice grade (DS0) equivalents."[1228] According to Verizon's interpretation, then, a four-line threshold could be reached on a single loop, if that loop carries four or more voice-grade (DS0) equivalents (that is, four times 64 kbps). Verizon points out, for example, that a customer may receive up to 24 voice-grade channels through a single integrated services digital network (ISDN) line.[1229] Verizon agrees with AT&T, however, that we should interpret the rule as addressing capacity that terminates on a circuit switch,[1230] but it proposes no contract language reflecting this position.

(ii) Discussion

373. The local switching exception eliminates an incumbent's obligation to provide unbundled local switching when the requesting carrier serves end-users with four or more "voice grade (DS0) equivalents or lines."[1231] By definition, a DS0 is a 64 kbps digital channel.[1232] We therefore conclude that the phrase "four or more voice grade (DS0) equivalents or lines"

[1225] AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.4.

[1226] Tr. at 174 (testimony of AT&T witness Pfau); AT&T Brief at 130; *see* AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.4 (proposing that Verizon be able to exercise the local switching exception only with regard to "2-wire unbundled [l]oops").

[1227] Tr. at 174 (testimony of AT&T witness Pfau); AT&T Brief at 130.

[1228] Verizon UNE Brief at 36, n.43; Verizon UNE Reply Brief at 24.

[1229] Tr. at 175 (testimony of Verizon witness Gilligan).

[1230] *Id.* at 174-75 (testimony of Verizon witness Gilligan); *see* Verizon UNE Brief at 36 n.43.

[1231] 47 C.F.R. § 51.319(c)(2).

[1232] Tr. at 175.

encompasses, in addition to four two-wire loops, other facilities that provide an end user with at least 256 kbps of transmission capacity (*i.e.,* four DSO equivalents, at 64 kbps each). For instance, as Verizon suggests, a customer that receives four or more voice-grade (DS0) equivalents through a single ISDN line would meet the four-line threshold.[1233] Neither Commission precedent, nor the text of Commission rule 319(c)(2), suggests that this exception applies strictly to the number of 2-wire loops. We accordingly reject AT&T's interpretation of this language in rule 51.319(c)(2).

374. Because a competitive LEC would not purchase local switching for non-switched traffic, we agree with AT&T and Verizon that the rule requires that the 64 kbps of transmission capacity be capable of terminating in a switch.[1234] Specifically, as Verizon concedes, capacity in the high frequency portion of a local loop that is split off and dedicated to an ISP should not be counted in determining whether the four-line threshold is met.[1235] AT&T and Verizon shall reflect this ruling in their interconnection agreement.

g. Offices Where Exception Will Apply

375. AT&T proposes language that would require Verizon to list the offices for which it may invoke the unbundled local switching exception in an appendix to the interconnection agreement.[1236] Although Verizon's witness appeared to accept this proposal during the hearing,[1237] Verizon's proposed contract language does not reflect this acceptance.[1238] Consistent with Verizon's position at the hearing, we require that the interconnection agreement specify the offices for which Verizon may invoke the exception. We find AT&T's suggestion to be reasonable, and Verizon has not argued otherwise.

h. Change of Law

376. AT&T proposes language under which the interconnection agreement provisions regarding the unbundled local switching exception would become null and void 30 days after the effectiveness of any Commission rule eliminating or modifying that exception.[1239] AT&T claims that it should not have to relitigate, renegotiate, or arbitrate the unbundled local switching

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[1233] *Id.* (testimony of Verizon witness Gilligan).

[1234] Verizon UNE Brief at 36 n.43, citing Tr. at 175 (testimony of Verizon witness Gilligan).

[1235] Tr. at 175 (testimony of Verizon witness Gilligan).

[1236] AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.2.

[1237] Tr. at 188-89 (Verizon witness Gilligan stating that she would have no objection to the agreement's listing the offices for which Verizon could invoke the local switching exception).

[1238] Verizon's November Proposed Agreement to WorldCom, Part C, Network Elements Attach., § 9.1.

[1239] AT&T's November Proposed Agreement to Verizon, § 11.4.1.5.1.

exception in the event the Commission eliminates or modifies it.[1240] Verizon argues that the change of law provisions in Verizon's proposed contract would address this situation and that there is nothing unique about the local switching exception that requires a separate change of law provision.[1241] We agree with Verizon that the unbundled local switching exception presents no unique change of law considerations.[1242] We therefore conclude that the interconnection agreement's overall change of law provisions should apply in this area.[1243]

7. Issue III-10 (Line Sharing and Line Splitting)

a. Introduction

377. AT&T, WorldCom and Verizon disagree about the language to include in the agreement concerning Verizon's obligations related to advanced services, particularly line sharing and line splitting.[1244] According to WorldCom, it has settled with Verizon all but one of its advanced services issues: if and when Verizon upgrades its network to provide xDSL-based services out of its remote facilities, should the agreement include language requiring Verizon to provide WorldCom with access to remote facilities and to loops attached to those facilities on the same terms and conditions as Verizon provides to itself or to its affiliates.[1245] Generally, AT&T and Verizon disagree about the level of operational detail to be included in the agreement. At one point in this proceeding, AT&T identified 15 sub-issues within Issue III-10 (which asks the general question of "How and under what conditions must Verizon implement line splitting and line sharing?").[1246] However, AT&T chose not to identify which language, if any, in its proposal is responsive to which sub-issue and did not brief Issue III-10 by sub-issue. While the parties are free to choose how to present their arguments, because of the briefing format selected by AT&T,

[1240] AT&T Brief at 131.

[1241] Verizon UNE Reply at 25.

[1242] *See id.*

[1243] We address those change of law provisions in connection with Issues IV-113/VI-1-E, below.

[1244] Line sharing occurs when an incumbent is providing, and continues to provide, voice service on the particular loop to which the competing carrier seeks access in order to provide xDSL service. Line splitting refers to the situation where the competing carrier(s) provides both voice and data service over a single loop. *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 01-26, 16 FCC Rcd 2101, 2110, para. 17 (2001) (*Line Sharing Reconsideration Order*).

[1245] WorldCom Brief at 157. WorldCom's proposed language responsive to Issue III-10-4 is found in Attachment III, section 4.10.

[1246] This number rises to 17 if we include Issues III-10-A and III-10-B, both of which ask whether Verizon must provide line sharing and line splitting in a "nondiscriminatory and commercially reasonable manner." *See* Verizon Advanced Services Brief at 13 n.16.